UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, **Plaintiff,** v. **$93,244.28 in U.S. Currency, and $664,938.05 in U.S. Currency,** **Defendants.**	)	Civil Action No. 1:17-CV-265[DNH/DJS]

VERIFIED COMPLAINT OF FORFEITURE *IN REM*

Plaintiff, the United States of America, by its attorney, Richard S. Hartunian, United States Attorney for the Northern District of New York, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure.

NATURE OF ACTION

28) This is an action to forfeit and condemn to the use and benefit of the United States of America the following property: $93,244.28 in U.S. Currency and $664,938.05 in U.S. Currency (collectively, the "defendant currencies") representing property involved in violations of 18 U.S.C. §§ 1343, 1349, and 1956(a)(2) and (h).

THE DEFENDANTS *IN REM*

29) On or about March 29, 2016, the Department of Homeland Security - Homeland Security Investigations ("HSI") obtained a search and seizure warrant for Legato Enterprises, Inc., and the residence of Samuel C. Baker in Laurinburg, North Carolina. The warrant was authorized by Hon. Joe L. Webster, United State Magistrate Judge for the Middle District of North Carolina. On March 30, 2016, Judge Webster authorized search warrants for, *inter alia*, a Century-brand safe located within a walk-in closet at Mr. Baker's residence and a red GMC Denali XL registered to

Mr. Baker bearing North Carolina Registration ****5647. On that same date, Hon. Daniel J. Stewart, United States Magistrate Judge for the Northern District of New York, authorized a seizure warrant for Branch Bank & Trust ("BB&T") bank account ***6035 in the name of Legato Enterprises, Inc. ("Legato").

30) During the execution of these search warrants, a portion of the defendant currencies were seized as follows:

i) $18,330.00 in United States currency was seized on March 30, 2016 from a Century-brand safe within a walk in closet at Samuel C. Baker's residence;

ii) $1,410.00 in United States currency was seized on March 30, 2016 from the red GMC Denali XL;

iii) $73.504.28 in United States currency was seized on March 30, 2016 from BB&T bank account ***6035 in the name of Legato; and

31) On May 20, 2016, Judge Stewart authorized a seizure warrant for the defendant $664,938.05 in United States currency from BB&T bank account *****3436 in the name of Tinidril.

32) The defendant currencies are presently in the custody of the Department of Homeland Security, United States Customs and Border Protection ("CBP").

JURISDICTION AND VENUE

33) Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant currency. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345 and over an action for forfeiture under 28 U.S.C. § 1355(a).

34) This Court has *in rem* jurisdiction over the defendant currencies under 28 U.S.C. § 1355(b). Upon the filing of this complaint, the plaintiff requests that the Court issue an arrest

warrant *in rem* pursuant to Supplemental Rule G(3)(b), which the plaintiff will execute upon the property pursuant to 28 U.S.C. § 1355(d) and Supplemental Rule G(3)(c).

35) Venue is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, because the acts or omissions giving rise to the forfeiture occurred in this district.

BASIS FOR FORFEITURE

27) The proceeds of offenses in violations of Title 18, United States Code, Sections 1343 and 1349, are subject to civil forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C). Section 981(a)(1)(C) provides for the forfeiture of "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a ... 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense."

28) Section 1956(c)(7), in turn, defines a "specified unlawful activity" as "any act or activity constituting an offense listed in section 1961(1) of this title." Section 1961(1) defines "racketeering activity" to include offenses in violation of "section 1343 (relating to wire fraud)." 18 U.S.C. § 1961(1).

36) Title 18, United States Code, Section 1956, entitled laundering of monetary instruments, states:

> (a)(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States –
>
> (A) with the intent to promote the carrying on of specified unlawful activity;
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> * * *
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> (h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

29) Property involved in, or traceable to, an offense in violation of Title 18, United States Code, Section 1956(a)(2)(A) is subject to civil forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(A), which provides for the forfeiture of: "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property." 18 U.S.C. §§ 981(a)(1)(A).

FACTS

30) The facts alleged in this complaint are based upon information and belief, the sources of which are reports from the Department of Homeland Security and other written and oral information officially received by the Office of the United States Attorney for the Northern District of New York.

31) From in or about December 2014 through on or about March 30, 2016, HSI and Internal Revenue Service – Criminal Investigations ("IRS-CI"), with the assistance of information provided by Canadian authorities, conducted an investigation into a sophisticated international criminal organization that smuggled large quantities of cut rag processed tobacco into Canada from the United States. To facilitate the smuggling of tobacco, the organization communicated via text message and encrypted e-mails. Derek White, a Canadian member of the organization, ordered tobacco via text messages from Samuel C. Baker, a tobacco broker in North Carolina. Samuel Baker was Vice President of Tinidril, Inc., a tobacco brokerage company, along with his brother Edgar Miller Baker, Jr. Sylvan Ethier, another Canadian member of the organization, also ordered tobacco from Samuel Baker. Ethier directed the transfer of funds to Legato Enterprises Inc., for which Samuel C. Baker served as president, to pay for the purchase of tobacco.

32) Samuel C. Baker arranged for the transport of tobacco to locations in the United States, including warehouses in Dunkirk, New York and Parsippany, New Jersey. Canadian

members of the organization then directed truck drivers to pick up the tobacco and drive it across the border without paying the required excise taxes and duties. The truck drivers falsely declared to Canadian officials that they were carrying non-tobacco cargo, including salt, Pampers, and cantaloupes. The truck drivers then took the tobacco to illicit warehouses in Quebec, Canada for transport to unlicensed cigarette manufacturing facilities. Canada and the Province of Quebec heavily taxed the importation of tobacco. *See, e.g.*, Excise Act 2001, Schedule 3, ch. 42.[1] Canadian law enforcement estimates that each tractor trailer load consisted of approximately 29,040 pounds of undeclared tobacco, and denied Canada and the Province of Quebec approximately CAD $3.3 million in tax revenue.

33) As part of this investigation, HSI and IRS-CI have examined text messages intercepted pursuant to a Canadian court order. These text messages show Samuel C. Baker and Derek White discussing in a clandestine, coded manner the purchase, payment, and movement of tobacco. HSI and IRS-CI have also analyzed bank records for Tinidril and Legato, which show large cash deposits and wires from both domestic and international sources at times consistent with the tobacco transfers discussed in the text messages between Samuel C. Baker, White, and other members of the organization. Agents also reviewed text messages stored by Samuel C. Baker on

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[1] Specifically, the Excise Act states, in relevant part:

> 42 (1) Duty is imposed on tobacco products manufactured in Canada or imported and on imported raw leaf tobacco at the rates set out in Schedule 1 and is payable
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> . . . .
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> (b) in the case of imported tobacco products or raw leaf tobacco, by the importer, owner or other person who is liable under the Customs Act to pay duty levied under section 20 of the Customs Tariff or who would be liable to pay that duty on the tobacco or products if they were subject to that duty.

his computer and at least one cellular telephone recovered from his house that discussed the movement of tobacco.

34) Similarly, records from the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), confirm that Samuel and Edgar Baker engaged in tobacco transfers at times consistent with the tobacco transfers discussed in the text messages and reflected in bank records.

35) Taken together, these materials reveal that Samuel Baker participated in a wire fraud conspiracy to defraud the Canadian government of money that was owed to it and in an international money laundering conspiracy to transfer money from Canada to the United States to promote this wire fraud.

36) Specifically, the evidence gathered by agents shows: (i) numerous wire communications between Samuel Baker and Derek White discussing orders and payment for tobacco; (ii) an agreed-upon scheme to transport tobacco across the Canadian border while evading Canadian import taxes; and (iii) Derek White and Sylvan Ethier, or their proxies, sending money internationally to BB&T Bank Accounts belonging to Legato and Tinidril to promote this unlawful activity.

37) Legato maintained bank account number *****6035 at BB&T. Records obtained from BB&T identify Samuel C. Baker and his wife, Mary Louise Baker, as President and Vice President of Legato, respectively, and list their home residence in Laurinburg, North Carolina as the address for Legato. Samuel C. Baker and Mary Louise Baker each maintained signature authority on the account.

38) Tinidril maintained bank account *****6515 at BB&T. BB&T records list the address of Tinidril Inc. as the home address of Samuel C. Baker and the account signatories as Samuel C. Baker and Edgar Baker.

39) Tinidril also maintained bank account *****3436 at BB&T. Information obtained from BB&T shows that on February 16, 2016, account *****6515 was blocked due to possible fraudulent activity. On February 18, 2016, account *****3436 was opened, and on February 25, 2016, BB&T issued a Force Pay Debit Memo for $552,258.31, which was deposited into account *****3436.

40) BB&T bank records for Legato and Tinidril show substantial online banking login activity associated with these two accounts.

41) From March 2014 through March 2016, Derek White made approximately twenty-seven wire transfers totaling approximately $1,919,503.00 into Tinidril's BB&T account *****6515, as follows:

Date	Depositor in Canada	Description	Amount (USD)	Bank Account
March 24, 2014	Derek White	Purchase product	$116, 345	Tinidril BB&T *6515
April 22, 2014	Derek White	Racing purposes	$111,505	Tinidril BB&T *6515
May 22, 2014	Derek White	Racing parts	$35,855	Tinidril BB&T *6515
May 29, 2014	Derek White	Racing parts	$49,975	Tinidril BB&T *6515
June 3, 2014	Derek White	Racing parts	$55,949	Tinidril BB&T *6515
Feb. 25, 2015	Derek White	Car parts	$49,975	Tinidril BB&T *6515
Feb. 26, 2015	Derek White	Car parts	$41,975	Tinidril BB&T *6515
March 18, 2015	Derek White	Purchase of auto racing parts	$49,975	Tinidril BB&T *6515
March 20, 2015	Derek White	Racing parts	$41,213	Tinidril BB&T *6515
March 30, 2015	Derek White	Racing fees	$49,975	Tinidril BB&T *6515
April 2, 2015	Derek White	Auto parts	$41,975	Tinidril BB&T *6515
April 16, 2015	Derek White	Race car parts	$49,975	Tinidril BB&T *6515
April 20, 2015	Derek White	Auto parts	$41,975	Tinidril BB&T *6515
May 6, 2015	Derek White	Racing expenses	$44,975	Tinidril BB&T *6515
May 7, 2015	Derek White	Racing expenses	$42,675	Tinidril BB&T *6515
July 2, 2015	Derek White	Auto/racing equipment	$91,837	Tinidril BB&T *6515
August 27, 2015	Derek White	Auto parts	$91,837	Tinidril BB&T *6515
September 21, 2015	Derek White	Auto parts	$91,840	Tinidril BB&T *6515
October 27, 2015	Derek White	Racing Expences	$91,815	Tinidril BB&T *6515
October 30, 2015	Derek White	Auto parts	$91,815	Tinidril BB&T *6515

November 16, 2015	Derek White	Nascar Parts	$11,847	Tinidril BB&T *6515
December 3, 2015	Derek White	Auto parts	$36,975	Tinidril BB&T *6515
December 3, 2015	Derek White	Auto parts	$54,965	Tinidril BB&T *6515
December 8, 2015	Derek White	Auto parts	$91,965	Tinidril BB&T *6515
December 15, 2015	Derek White	Racing Expences	$41,975	Tinidril BB&T *6515
December 16, 2015	Derek White	Racing Expences	$87,085	Tinidril BB&T *6515
January 7, 2016	Derek White	Racing fees	$87,085	Tinidril BB&T *6515
January 14, 2016	Derek White	Racing fees	$87,085	Tinidril BB&T *6515
January 26, 2016	Derek White	Racing fees	$87,085	Tinidril BB&T *6515
February 11, 2016	Derek White	Auto Parts	$49,975	Tinidril BB&T *6515
	Total		**$1,919,503**	

42) White communicated with Baker via telephone calls and text messages to arrange some of these transactions.

43) During this time period, Sylvan Ethier arranged for wire transfers to BB&T bank account *****6035, held by Legato, on at least four separate occasions, transferring funds totaling approximately $621,580.00. Ethier and members of his organization communicated to arrange these transactions.

44) As noted above, $73,504.28 in United States currency was seized from BB&T bank account *****6035 on March 30, 2016. On March 29, 2016, law enforcement received BB&T records showing that bank account *****6515 had been closed.

45) On or about May 20, 2016, $664,938.05 in United States currency was seized pursuant to a seizure warrant for BB&T bank account *****3436 in the name of Tinidril.

46) Information obtained from BB&T showed the funds in Tinidril account *****6515 at the time that account was blocked on February 16, 2016 were subsequently transferred to the new Tinidril account bearing account number *****3436 on February 25, 2016, and comprised a portion of the defendant currency seized on May 20, 2016.

ADMINISTRATIVE CLAIMS

47) On or about May 10, 2016, U.S. Customs and Border Protection received an administrative claim to $19,740.00 in United States currency, a portion of the defendant currency, filed by Samuel Baker through his attorney, David Long, Esq.

48) Also on or about May 10, 2016, U.S. Customs and Border Protection received an administrative claim to $73,504.28 in United States currency, a portion of the defendant currency from Legato Enterprises, Inc. through Legato's attorney David Long, Esq.

49) The government, having received the consent of David Long, Esq. attorney for both Samuel Baker and Legato Enterprises, Inc., sought and obtained permission from the Court to extend the time period for the government to file a civil forfeiture in this action from August 8, 2016 through and including March 6, 2017.

WHEREFORE, the United States of America prays that process of issue in due form of law, according to the course of this Court in actions *in rem*, against the defendant currency and that a warrant issue for the arrest of the defendant currency as more particularly described herein; that all persons having any interest therein be cited to appear herein and answer the complaint; that a judgment be entered declaring the defendant currency condemned and forfeited to the United States of America for disposition in accordance with law; that the costs of this suit be paid to and recovered by the United States of America; and that the United States be granted such other and further relief as this Court may deem just and proper.

Dated: March 6, 2017

RICHARD S. HARTUNIAN
United States Attorney

By: */s/ Sean O'Dowd*
Sean O'Dowd
Assistant United States Attorney
Bar Roll No. 518067

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

I, Justin Jones, being duly sworn, depose and state:

I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations. I have read the foregoing Complaint for Forfeiture and assert that the facts contained therein are true to the best of my knowledge and belief, based upon knowledge possessed by me and/or on information received from other law enforcement officers.

Dated this 3 day of March, 2017.

Justin Jones, Special Agent
Homeland Security Investigations

Sworn to and subscribed before me this 3rd day of March, 2017.

Jessica Vellano
Notary Public

JESSICA VELLANO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01VE6053483
Qualified In Rensselaer County
My Commission Expires January 08, 2019